



Australian Energy Market Commission

**Rule Determination**

**National Electricity Amendment (Registration  
Changes for Traders, Reallocators, and  
Transfer of Registration) Rule 2008**

Rule Proponent  
NEMMCO

4 December 2008

Signed: .....

**John Tamblyn**  
**Chairman**

For and on behalf of  
Australian Energy Market Commission

**Commissioners**

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## **Citation**

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## **About the AEMC**

The Council of Australian Governments, through its Ministerial Council on Energy, established the Australian Energy Market Commission (AEMC) in July 2005 to be the Rule maker for national energy markets. The AEMC is currently responsible for Rules and policy advice covering the National Electricity Market and elements of the natural gas markets. It is a statutory authority. Our key responsibilities are to consider Rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council on Energy as requested, or on AEMC initiative.

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## Abbreviations

AEMC	Australian Energy Market Commission
APA	Auction Participation Agreement
Commission	see AEMC
CS	Clearing and Settlement
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company Limited
NSP	Network Service Provider
SRA	Settlements Residue Auction
SRDA	Settlement Residue Distribution Agreement
TNSP	Transmission Network Service Provider

## Summary

On 16 September 2008, the Australian Energy Market Commission (Commission) received a Rule change proposal regarding the modification of registration arrangements from NEMMCO entitled “Registration changes for Traders, Reallocators, and Transfer of Registration”. This Rule change proposal aims to include additional eligibility requirements for applicants wishing to register as a Trader or Reallocator and implement a new process whereby transfer of registration between a Registered Participant and a person may be undertaken under certain circumstances.

The Rule change proposal can be divided into three sections:

- including additional eligibility criteria for a person seeking to register as a Trader;
- including additional eligibility criteria for a person seeking to register as a Reallocator; and
- providing a process in the Rules through which registration may be transferred from a Registered Participant to another person under certain circumstances.

The Commission published the Rule change proposal in accordance with sections 95 and 96 of the National Electricity Law (NEL). NEMMCO requested that the Rule change proposal be expedited under section 96 of the NEL as it considered the proposed Rule to be a non-controversial Rule. The Commission agreed to expedite the Rule making process as it considered that the proposed Rule with amendments is unlikely to have a significant effect on the national electricity market (NEM), subject to any written objections to the expedited process. The period for written objections closed on 17 October 2008 and written submissions closed on 31 October 2008. There were no written objections and a submission was received from the ERAA. However, following a late submission from the NGF, on 13 November 2008 the Commission published a notice under section 107 of the NEL delaying publication of the final Rule by three weeks to adequately consider the issues raised in that submission. . The Commission is satisfied that the Rule will promote the National Electricity Objective (NEO) and has determined to make a Rule under sections 102 and 103 of the NEL. The Commission considers the proposed Rule with amendments will satisfy the NEO as:

- it will require a person seeking to register as a Trader under the Rules to have the express purpose of participating in the NEM, thereby promoting the efficient operation of the NEM;
- it will require a person seeking to register as a Trader or a Reallocator under the Rules to be a ‘wholesale client’ (as that term is defined in section 761G(4) of the Corporations Act 2001 (Cth) to ensure that NEMMCO can satisfy one of the conditions of its Clearing and Settlement (CS) facilities license, if granted, thereby promoting the efficient operation of the NEM; and

- it will allow NEMMCO to transfer registration from a Registered Participant to a new owner under certain circumstances. This would result in a lower administrative burden for Registered Participants, reduce unnecessary duplication of information that NEMMCO already holds and also reduce the regulatory burden on the new owners. This would in turn result in enhancing the reliability, safety and security of the NEM.

In coming to this decision, the Commission has considered the Rule Change Proposal and its requirements under the NEL.

This Commission has approved some of NEMMCO's proposed Rule changes with amendments, and reaches the following conclusions:

1. the inclusion of NEMMCO's proposed additional clauses to 2.5A, which will add additional eligibility requirements for Traders;
2. the inclusion of NEMMCO's proposed additional clauses to 2.5B, which will add additional eligibility requirements for Reallocators; and
3. the inclusion of NEMMCO's proposed additional clauses to 2.9A, which will provide for a process to allow transfer of registration.

# **1 The NEMMCO Rule Change Proposal**

On 16 September 2008, the Commission received a Rule change proposal regarding changes to Chapter 2 (Registered Participants and Registration) from NEMMCO entitled “Registration Changes for Traders, Reallocators, and Transfer of Registration”.

## **1.1 Context and Background**

## **1.2 Summary of the NEMMCO Rule Change Proposal**

NEMMCO’s Rule change proposal seeks to incorporate a number of concepts into Chapter 2 (Registered Participants and Registration) that it considers to be inadequate under the existing Rules. NEMMCO considers that the following be included in Chapter 2 and other relevant places where cross-referencing of the Rules occurs:

- Additional eligibility requirements for a person seeking to register as a Trader or Reallocator under the Rules; and
- a transfer of registration process which allows existing registered facilities to be transferred from a Registered Participant to a person seeking registration for those facilities under certain circumstances.

A description of the specific issues that have been raised by NEMMCO are outlined in the following section.

## **1.3 Issues to be Addressed by the Proposed Rule**

### **1.3.1 Eligibility Requirements for Registration of Traders**

NEMMCO considers that currently the registration requirements are insufficient for Traders under the Rules and raises the following issues:<sup>1</sup>

- currently there are minimal eligibility requirements for registering this category of participant in the Rules;
- it is inappropriate to register a person as a Trader who is not, at the time of registration, eligible to trade in the settlements residue auction (SRA); and
- the process for establishing an account with Austraclear presently relies, to some extent, on the fact that a party has achieved registration as a Trader.

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<sup>1</sup> NEMMCO Rule change Proposal, Attachment A, P.p. 2-3

### **1.3.2 Eligibility Requirements for Registration of Reallocators**

Reallocators are persons registered to undertake reallocation transactions, which are defined in the Rules as “a transaction undertaken with the consent of two Market Participants and NEMMCO, under which NEMMCO credits one Market Participant with a positive trading amount in respect of a trading interval, in consideration of a matching negative trading amount debited to the other Market Participant in respect of the same trading interval.”<sup>2</sup>

Currently there are no Reallocators registered in the NEM; however, NEMMCO considers that they are an important component of the financial design of the NEM.

NEMMCO also states that “registration requirements are too limited for this category of participant and it is inappropriate to have no eligibility requirements for registering this category of Registered Participant in the Rules”.<sup>3</sup>

In particular, the Rules need to include a requirement that registered Reallocators be wholesale clients. This requirement is proposed to coincide with the expected conditions of an exemption from holding a Clearing and Settlement (CS) facility licence that NEMMCO has applied for.

### **1.3.3 Transfer of NEM Related Assets Between Registered Participants**

In 2007, NEMMCO determined 67 registrations and exemptions under Chapter 2 of the Rules. Of these, 57 related to generating facilities and around half of these involved transferring registration from one party to another. Currently the Rules do not include a process which allows the transfer of registration in respect of facilities that are already operating in the NEM to be transferred to a new owner/Registered Participant, with each transfer being treated the same as a new registration.

Where no changes to the registration are proposed and there are no issues with the current registration (such as compliance under the Rules), NEMMCO considers that it is unnecessary to request certain technical information that it already holds in respect of facilities that are operating in the NEM. It is also considered administratively burdensome for applicants purchasing such facilities to provide it. NEMMCO does not believe there is any benefit in collecting this information again and would also reduce the regulatory burden on applicants. This issue is only relevant for applicants purchasing facilities that are already operating in the NEM. NEMMCO notes that transactions of this nature occur regularly and this is likely to continue in the future.

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<sup>2</sup> National Electricity Rules, Version 21, clause 3.15.11, P.199.

<sup>3</sup> NEMMCO Rules change Proposal, Attachment A, p.4.

## 1.4 Consultation of the Rule Change Proposal

On 2 October 2008 the Commission commenced consultation under sections 95 and 96 of the NEL. The Rule change proposal was expedited under section 96 of the NEL as, NEMMCO stated that this Rule change would:

- have an insignificant effect on the market as a whole;
- improve the administrative efficiency of the NEM;
- only affect new persons seeking registration as a Trader or Reallocator, or seeking to transfer existing facilities from one Registered Participant to another;
- bring forward existing requirements applying to Traders; and
- protect NEMMCO from the identified risks to its ASIC exemptions from holding certain licences under the Corporations Act.

and would therefore be a non-controversial Rule, subject to written objections from stakeholders. There were no written objections to the expedition of the Rule change proposal, which closed on the 17 October 2008. Additional public consultation on the Rule change proposal was open for a further two weeks. Submissions closed on 31 October 2008, with submissions received from the ERAA and the NGF.

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## 2 Methodology for Developing the Determination

The Commission has determined to make this final Rule determination in accordance with section 102 of the NEL, and the proposed Rule with amendments in accordance with section 103 (the final Rule). The final Rule, which is different to the Proposed Rule put forward by the proponent is attached to this determination. The final Rule commences operation on 1 January 2009.

This determination sets out the Commission's reasons for making the final Rule. The Commission has taken into account:

1. the Commission's powers under the NEL to make the final Rule;
2. the proponent's Rule change proposal and proposed Rule;
3. submissions received;
4. the Commission's analysis as to the ways in which the final Rule will or is likely to contribute to the achievement of the national electricity objective (NEO) so that it satisfies the statutory Rule making test; and
5. any relevant Ministerial Council on Energy (MCE) statements of policy principles.

### 2.1 The Commission's Power to Make a Rule

The Commission is satisfied that the proposed Rule falls within the subject matters for which the Commission may make Rules, as set out in section 34 of the NEL and in accordance with Schedule 1 to the NEL.

The Rule satisfies section 34(1) of the NEL, which states that:

“...the AEMC, in accordance with this Law and the Regulations, may make Rules, to be known, collectively, as the “National Electricity Rules”, for or with respect to—

(a) regulating—

- (i) the operation of the national electricity market; and
- (iii) the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system;”,

and section 34(2) of the NEL, more specifically, items 1 and 3 of the Schedule 1 to the NEL, which states that:

- item 1. The registration of persons as Registered participants or otherwise for the purposes of this Law and the Rules, including the deregistration of such

persons or suspension of such registrations;

item 3. Prudential requirements to be met by a person –

- (a) before being registered as a Registered participant; and
- (b) as a Registered participant.

For these reasons, the Commission is satisfied that the proposed Rule is a matter in which the AEMC may make a Rule.

## **2.2 Assessment of the Proposed Rule: the Rule making test, the National Electricity Market Objective and the MCE statement**

### **2.2.1 General**

The Rule making test requires the Commission to be satisfied that a Rule that it proposes to make will contribute to the NEO, as outlined in Section 7 of the NEL.

The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to –

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

Section 2.2.3 contains the Commission’s assessment of the extent to which the Rule promotes the NEO and satisfies the Rule making test.

In addition, the NEL requires the Commission to have regard to any MCE statements of policy principles in applying the Rule making test. The Commission notes that currently there are no MCE statements of policy principles that relate to the issues contained in this Rule change proposal.

### **2.2.2 NEMMCO’s Rule change Proposal**

#### **Promotion of the NEO**

NEMMCO’s Rule proposal has considered the impact of its proposal on the NEO. In its Rule change proposal NEMMCO outlines how its Rule would meet the NEO, and considers overall that the proposed Rule would promote efficiency.<sup>4</sup>

In relation to Traders, NEMMCO considers that:

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<sup>4</sup> NEMMCO Rule change proposal, 16 September 2008, Attachment A, P.p. 8-9.

- by ensuring that Trader’s are wholesale clients, the integrity of financial transactions in the NEM will be improved and will ensure that only those persons registering for the sole purpose of trading in the NEM are registered.
- by combining the registration, eligibility assessment, and auction participation agreement (APA) processes into one registration, improvements in the administration of the market can be anticipated.

In relation to Reallocators, NEMMCO considers that:

- by ensuring that NEMMCO only engages in reallocation transactions with persons that are wholesale clients – a requirement likely to be imposed on NEMMCO if its application for exemption from the requirement to hold a CS facility licence is granted – the efficient operation of these transactions would be promoted.

In relation to the transfer of registration, NEMMCO considers that:

- by reducing the regulatory burden on transfers of registration following merger and acquisition activity in respect of facilities that are operating in the NEM, the NEO would be promoted by using resources more efficiently, including:<sup>5</sup>
  - “...applicants will not need to provide technical information already held by NEMMCO for a facility already registered if it is acceptable to NEMMCO”;
  - “...it reduces the resources involved in assessing and processing the technical information for facilities being registered”; and
  - “...it reduces the costs involved in providing this information to NEMMCO”.

### **Expected benefits**

NEMMCO has also considered the expected costs and benefits of its Rule change proposal and the potential impacts of the change on those likely to be affected. NEMMCO considers that the benefits of its proposed Rule change would be likely to include:<sup>6</sup>

- NEMMCO expects that the proposed Rule will have the result of “strengthening the Rules by clarifying NEMMCO’s responsibilities regarding registering Traders and Reallocators as Registered Participants”. The two main benefits that NEMMCO envisages are:
  - “...the proposed Rule would ensure Traders and Reallocators are verified as wholesale clients, consistent with NEMMCO’s current exemption under the Corporations Act (in the case of Trader’s) and expected exemption (in the case of Reallocators)”;

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<sup>5</sup> Ibid. at p.9.

<sup>6</sup> Ibid.

- “...that bringing forward the requirement for a Trader to enter into an APA before it is registered increases administrative efficiency, reducing the amount of coordination required later between NEMMCO and the applicant”.

For the transfer of registration process, NEMMCO considers that expected benefits “will accrue to applicants who have purchased facilities that are operating in the NEM, because it would reduce the amount of technical information required from them”.<sup>7</sup>

### **Expected Costs**

NEMMCO considers that the associated costs of the proposed changes are “expected to be minimal for applicants seeking registration as a Trader or Reallocator, and for NEMMCO”.<sup>8</sup> Proposed changes for Traders only brings forward the requirements within the registration process and does not increase the burden of information for new applicants, and has no affect on currently registered Traders. For NEMMCO small costs would be incurred through amending the registration procedures; however, these are expected to be minimal.

Furthermore, the “associated costs of including a [registration] transfer process would be borne by NEMMCO; [with these costs being] incurred in setting up procedures, guidelines and application forms to deal with the proposed Rule.”<sup>9</sup>

### **2.2.3 The Commission’s Test of the National Electricity Objective**

Including additional eligibility requirements for a person seeking to register as a Trader or Reallocator will promote the efficient operation of the NEM as:

- the additional condition that a person seeking to register as a Trader enter into an APA will ensure that that person has the express purpose of registering as a Trader to participate in the NEM; and
- the additional condition that a person seeking to register as a Trader or a Reallocator be a wholesale client (as that term is defined in section 761G(4) of the Corporations Act 2001 (Cth) will ensure that NEMMCO is able to meet one of the conditions expected to be imposed on it under its CS facilities license, if granted.

As a result, quality, reliability and security of supply of electricity services will be achieved. Therefore, the Commission considers these additional eligibility requirements for Traders and Reallocators will support the NEO.

Providing a transfer of registration process in the Rules that is only applicable for applicants purchasing facilities that are already operating in the NEM would allow NEMMCO to transfer registration from a Registered Participant to a new owner

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

under certain circumstances. This would result in lower administrative burden for Registered Participants, reduce unnecessary duplication of information that NEMMCO already holds and also reduce the regulatory burden on applicants. This would in turn result in enhancing the reliability, safety and security of the NEM. Therefore, the Commission considers providing a transfer of registration process for currently registered assets promotes the NEO.

### **2.3 Differences between the Proposed Rule and Final Rule**

The Commission has adopted some of NEMMCO's proposed Rule changes in part and proposes other drafting changes to address issues that arose through analysis and from stakeholder submissions. These include making clear the eligibility requirements for registration as a Trader, and clarifying the transfer of registration between certain types of Registered Participant.

The final Rule specifies that:

- Traders be wholesale clients and are required to enter into an APA with NEMMCO as soon as practical before completing their registration as a Trader;
- Reallocators be wholesale clients as defined in section 761G(4) of the Corporations Act 2001 (Cth); and
- the transfer of registration will be possible between a Registered Participant and another party under certain circumstances.

Subject to the above amendments, the Commission has accepted NEMMCO's proposed Rule for Registration Changes for Traders, Reallocators, and Transfer of Registration. This Rule will commence from the 1 January 2009.

### **2.4 Rule commencement**

This Rule is scheduled to commence on 1 January 2009.

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## **A Commission's Analysis of the Proposed Rule**

In this Appendix the Commission addresses the issues that were raised in NEMMCO's Rule change proposal and submissions.

In summary, there are three areas covered in the Determination.

1. the inclusion of additional eligibility requirements for applicants registering to become a Trader under the Rules;
2. the inclusion of additional eligibility requirements for applicants registering to become a Reallocator under the Rules; and
3. the inclusion of a transfer of registration process, which allows existing registered facilities to be transferred to a person seeking registration for those facilities, under certain circumstances.

In developing the final Rule, the Commission has examined a number of issues, including:

- whether the Rule proposal in its current form would clarify the role of a Trader under the Rules and make sure that an applicant registering under this category is doing so to partake specifically in financial arrangements in the NEM;
- whether the Rule proposal in its current form would clarify the role of a Reallocator under the Rules and make certain that an applicant registering under this category is a wholesale client such that NEMMCO is consistent with the conditions of the clearing and settlement facility licence NEMMCO has applied for; and
- whether the inclusion of a process to define the transfer of registration between two parties under certain circumstances would promote administrative efficiency and reduce regulatory burden, further boosting the efficiency of the NEM.

This section details the Commission's analysis and reasons underlying its final Rule in relation to each of the issues identified above.

### **A.1 Eligibility requirements for registration as a Trader**

#### **A.1.1 NEMMCO's Rule proposal**

NEMMCO's Rule change proposal suggests modification of Clause 2.5A (Trader), as NEMMCO considers that currently the registration requirements are insufficient for Traders under the Rules and raises the following issues:<sup>10</sup>

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<sup>10</sup> NEMMCO Rule change Proposal, Attachment A, P.p. 2-3

- currently there are minimal eligibility requirements for registering this category of participant in the Rules;
- it is inappropriate to register a person as a Trader who is not, at the time of registration, eligible to trade in the settlements residue auction (SRA); and
- the process for establishing an account with Austraclear presently relies, to some extent, on the fact that a party has achieved registration as a Trader.

### **A.1.2 The Commission's consideration and reasoning**

The Commission notes that although Traders are important components of the financial design of the NEM, registration requirements for this category of Registered Participant are limited.

In addition, it is noted under clause 3.18.2 that NEMMCO may only enter into a Settlement Residue Distribution Agreement (SRDA) with a participant that has entered into an Auction Participant Agreement (APA) and is not a 'retail client' – that is a 'wholesale client', which are currently not explicitly noted under clause 2.5A. Furthermore, a Trader is registered for the sole purpose of trading in the SRA, and may only do so once it has entered an APA with NEMMCO. Therefore the Commission considers that eligibility requirements stating a Trader be a 'wholesale client' and have entered into an APA should be included in the Rules. However, under the Rules, only an eligible person as defined in rule 3.18.2 may enter an APA with NEMMCO, which requires that the eligible person be either registered as a Market Customer, Generator or Trader. Clearly it is not possible to seek registration and be registered at the same point in time, therefore, the Commission has amended clause 3.18.2(b)(1) to allow a person seeking to be eligible for registration as a Trader under Rule 2.5A to be an eligible person for the purposes of entering an APA with NEMMCO. Subsequently, after satisfying this eligibility requirement to enter into an APA with NEMMCO under rule 2.5A, the person could complete registration as a Trader.

### **A.1.3 The Commission's finding in relation to this issue**

In summary, the Commission accepts the following proposals:

- NEMMCO's proposed amendments to clauses 2.5A(c), 2.5A(c)(1), 2.5A(c)(2) and 2.5A(c)(2)(iii);
- amendment of clause 3.18.2(b)(1) to allow a person seeking to be eligible for registration as a Trader to be an eligible person for the purposes of entering an APA with NEMMCO;
- inclusion of NEMMCO's proposed clauses 2.5A(c)(3) and 2.5A(c)(4) that direct eligibility requirements for registration as a Trader; and
- inclusion of NEMMCO's proposed amendments to clause 3.18.1(e) such that the requirements of a Trader in respect of their obligations under an APA are clarified in the Rules.

## **A.2 Eligibility requirements for registration as a Reallocator**

### **A.2.1 NEMMCO's Rule proposal**

Reallocators have similar registration requirements to Traders and similarly, although this category of Registered Participant is an important component of the financial design of the NEM, registration requirements are minimal. In particular NEMMCO notes “the Rules need to include a registration requirement for Reallocators to be wholesale clients.<sup>11</sup> Consequently NEMMCO's Rule change proposal suggests modification of Clause 2.5B (Reallocator) to include the requirement that a Reallocator be a wholesale client.

### **A.2.2 The Commission's consideration and reasoning**

The Commission notes from NEMMCO's proposal that under the Corporations Act, “NEMMCO is required to have a clearing and settlement (CS) licence for facilitating reallocation transactions that could represent the settlement of a derivative contract, unless an exemption has been granted by the Australian Securities and Investment Commission (ASIC)”.<sup>12</sup> Furthermore, while NEMMCO applied for an exemption early in 2008, “NEMMCO expects that one of the conditions of this exemption will be requirement that the party privy to this transaction be a wholesale client”.<sup>13</sup> Given that the requirement to be a wholesale client is likely to be a condition of the exemption that NEMMCO has applied for, the Commission considers it prudent to include this requirement in the Rules.

### **A.2.3 The Commission's finding in relation to this issue**

In summary, the Commission accepts the following proposals:

- inclusion of NEMMCO's proposed clause 2.5B(c).

## **A.3 Transfer of registration process between participants for already registered assets**

### **A.3.1 NEMMCO's Rule proposal**

Following mergers and acquisitions, facilities are often transferred from one Registered Participant to another party. Currently under the Rules, in each of these applications, “NEMMCO was required to treat each of these as a new registration and follow the same processes required for assessing applications for new registration”.<sup>14</sup> The predominant reason for this process is that the Rules “do not

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<sup>11</sup> Ibid. at P.p. 3-4.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid. at p.4.

include a process which would allow the transfer of registration in respect of facilities that are already operating in the NEM to be transferred to a new owner/Registered Participant” under certain circumstances.<sup>15</sup>

Furthermore, NEMMCO considers that it “is unnecessary to request certain technical information that it [already] holds in respect of facilities that are operating in the NEM and it is administratively burdensome for applicants purchasing such facilities to provide it”. Therefore, the proposed Rule would address this issue by “including a new provision that would allow NEMMCO to transfer registration in circumstances where a facility is operating in the NEM from the Registered Participant to a new owner where the facility has been assessed and previously classified in accordance with the Rules” as well as other conditions which are set out in the final Rule.<sup>16</sup>

### **A.3.2 Submissions**

Only those submissions containing information relevant to the issue under discussion have been included.

#### **A.3.2.1 National Generators Forum (NGF)**

The NGF raises two issues in respect of the transfer of registration process in its submission. Firstly, the NGF notes that currently there are three distinct registration processes under the Rules. These are:<sup>17</sup>

1. Registration – where a party demonstrates that they can comply with the obligations of Chapter 3;
2. Connection – connection agreements are formed between parties as set out in Chapter 5 for the connection of facilities; and
3. Classification – where connected plant is assigned in NEMMCO’s systems to a Registered Participant.

The NGF further notes that the NEMMCO Rule change proposal “has attempted to separate the second step from the first and third, which is a good interim step”.<sup>18</sup> To further rationalise this transfer process, the NGF proposes that it would “be preferable to fully identify the three processes so that a cleaner and clearer process can be adopted for registration that avoids duplication of both stages one and two”.<sup>19</sup>

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid. at p.5.

<sup>17</sup> NGF Submission, p.1.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

The second issue noted by the NGF is that the “simplified process proposed by NEMMCO appears to falter when an intermediary is involved”.<sup>20</sup> The NGF further makes reference to NEMMCO’s proposed drafting of clause 2.9A.2(a)(6) and notes that this drafting “appears to only allow transfer of exemptions from the obligation to register not the transfer of the registration between intermediaries”.<sup>21</sup>

### **A.3.3 The Commission’s consideration and reasoning**

Since market start there have been many mergers and acquisitions throughout the NEM, which is considered likely to continue into the future. Therefore, the transfer of facilities already operating in the NEM between market participants will likewise continue and the Commission is of the opinion that inclusion of this transfer process in the Rules will add to the administrative efficiency of the NEM.

Registration is carried out under Chapter 2 of the Rules, with each type of Registered Participant being required to demonstrate they are able to fulfil their Rule obligations as outlined in Chapter 3. This is a discrete process through which NEMMCO is able to ascertain whether a participant will meet and execute all of its obligations under the Rules, and is necessary from a due diligence perspective. In short this process deals with “people” and their registration. Conversely, the Connection process is primarily carried out under Chapter 5 between the connecting party – usually a Generator – and the relevant Network Service Provider (NSP) for that jurisdiction. This process deals with “physical assets” and their connection to the NEM. The final Classification process links the “people” with the “physical assets” within NEMMCO’s systems. While there is the potentiality for duplication of the information supplied to the relevant bodies in the Registration and Connection processes, the Commission considers that there remains much merit in maintaining these as separate and discrete processes to uphold compliance and accountability.

Upon further discussion with the NGF to ascertain the intent of its submission in respect of the second issue, the Commission agrees with the NGF, that NEMMCO’s proposed clause 2.9A.2(a)(6) does not achieve the objective of allowing the transfer of registration between intermediaries. The Commission considers that use of the word “applicant” in that clause, which refers to the definition of “applicant” in clause 2.9.3(a) could be interpreted as only referring to the exempted party who is the owner of the facility, rather than an intermediary who is the operator of the facility. NEMMCO’s proposed Rule covers this by means of its definitions of 'transferor' and 'transferee' in proposed clause 2.9A (meaning a Registered Participant) operating in conjunction with clauses 2.9.2 and 2.9.3(a) and (d) (whereby owners and operators can be Registered Participants). Thus while clause 2.9A.3(a)(6) clarifies that intermediaries would not be affected in the event of a transfer of ownership, it is not explicit in respect of a transfer between intermediaries. Therefore, the Commission considers that to avoid doubt clause 2.9A.3(a)(6) be deleted from the final Rule.

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<sup>20</sup> Ibid. at p.2.

<sup>21</sup> Ibid.

#### **A.3.4 The Commission's finding in relation to this issue**

In summary, the Commission accepts the following proposals with amendments from the Commission:

- inclusion of NEMMCO's proposed clause 2.1.2(e1); and
- inclusion of NEMMCO's proposed clauses 2.9A, 2.9A.2(a)-(c) and 2.9A.3(a)-(c), with the omission of clause 2.9A.3(a)(6).